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No. 92-783

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

DALLAS & MAVIS FORWARDING CO., INC., - - - - - - - - - - Petitioner

versus

GENERAL DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL UNION NO. 89, - Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the federal court of appeals err in determining that an arbitration board acted within its authority under a collective bargaining agreement and in upholding the award?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, General Drivers, Warehousemen & Helpers, Local Union No. 89 ("Local 89"), hereby responds in opposition to Dallas & Mavis Forwarding Co., Inc.'s ("Dallas & Mavis") petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit in this case.

STATEMENT OF THE CASE

A. Proceedings Below

The petitioner, Dallas & Mavis, filed this action February 15, 1991, pursuant to 29 U.S.C. §185 to vacate an arbitration award rendered December 14, 1990 by a three-member Board of Arbitration ("board"). The underlying

Opinion and Award ("Award") is attached to the Petition filed herein as Appendix E, at pages 47a-81a.[1]

In its 39-page detailed opinion, the board systematically analyzed the language of numerous provisions of the parties' multi-employer national and regional collective bargaining agreements ("Agreement")[2] and examined prior decisions involving similar facts and circumstances. The entire arbitration award evinces a careful fidelity to the contract terms and the intent of the parties. The board concluded that Dallas & Mavis had violated the Agreement beginning in March, 1990, by refusing to merge ("dovetail") seniority lists to include employees laid off by another signatory employer at Ford Motor Company's Kentucky Truck Plant ("KTP") and to offer jobs in yard and mounting classifications in accordance with each employee's terminal seniority[3] at the KTP location.

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[1]References to "App. ___" are to the various Appendices to the Petition.

[2]Key portions of the Agreement are contained in the arbitrators' Award (App. E, pages 50a-56a) and the Magistrate's Findings of Fact, et cetera (App. D, pages 26a-35a). The national agreement and regional supplements cover bargaining unit employees in the carhauling industry.

[3]Article 5, Section 1, of the Agreement contains the following pertinent definitions:

> "Company seniority" is a term that is applied to an employee's date of hire by the Employer.
>
> "Terminal seniority" is a term that is applied to the employee's most recent date of employment at a specific terminal.
>
> "Dovetail seniority" is a term that is applied when two (2) or more seniority lists are merged or combined into a single seniority list which recognizes the terminal seniority date of each employee. The list is arranged by terminal seniority date with the most senior employee at the top.

(App. D, page 27a).

On November 4, 1991, the United States District Court for the Western District of Kentucky, Louisville Division, Honorable Ronald E. Meredith, entered summary judgment for Local 89 (App. C, pages 18a-19a), enforcing the Award and accepting the Findings of Fact, Conclusions of Law, and Recommendations of Chief U.S. Magistrate Judge, George J. Long (App. D, pages 20a-45a).

The district court's judgment was affirmed on appeal to the United States Court of Appeals for the Sixth Circuit (App. B, pages 3a-17a), decided August 5, 1992, stating:

> We agree with the court that the arbitration board's award was rationally drawn from the essence of the collective bargaining agreement, and so we affirm the grant of summary judgment to the defendant.

(App. B, page 4a). The court of appeals further observed:

> The board therefore *tailored its award as closely as possible to conform with the language* of the Agreement and with prior interpretations of the body that was specifically authorized to modify or adapt the Agreement, the National Committee.

(App. B, page 15a) (emphasis ours).

Finally, the court of appeals concluded that the board's construction of the Agreement was *at least* one of several plausible interpretations and came nowhere near violating the duties of an arbitrator:

> A court may disagree with this interpretation, but it cannot dispute that this was but one of several rational interpretations.
>
> * * * *
>
> This resolution is a far cry from those cases in which the arbitrator either totally disregarded the plain language of the contract or administered a personal "brand of industrial justice."

(App. B, pages 16a, 17a).

This petition followed the court of appeals' denial on September 17, 1992, of Dallas & Mavis' petition for rehearing *en banc* (App. A, pages 1a-2a).

B. Background

The disputed arbitration award recognized the rights of displaced employees of a different signatory employer[4] to be offered jobs by Dallas & Mavis in KTP yard and mounting classifications based on their terminal seniority on a merged seniority list, following a 1990 realignment of traffic (i.e., hauling trucks and cars) by Ford Motor Company. In effect, the board of arbitration held that the displaced Allied employees could *follow their work* to the new successful bidder for KTP yard and mounting work, Dallas & Mavis.

The "follow the work" principle is a form of bargained-for job security addressing the often unstable work environment of the carhauling industry. In Louisville, this method was utilized by the former carhauler, Dealers Transport, to staff the new plant jobs when KTP opened in 1969, following the historical pattern long established at Ford's older Louisville Assembly Plant ("LAP"). In fact, some of the people working at KTP in early 1990 were the *same people* who had followed their work in the yard, at LAP and KTP, through a series of employers over many years.

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[4]Allied Systems, Inc., formerly known as Motor Convoy, Inc., laid off its yard and mounting employees at KTP in March, 1990, as a result of Ford's rebidding of carhauling and related work in which the yard and mounting jobs were awarded to Dallas & Mavis. The present controversy arose from Dallas & Mavis' refusal to honor the terminal seniority rights of those employees laid off at KTP by Allied.

The principle of following the work under the unusual circumstances of the carhauling industry was reviewed and approved previously by this Court in the landmark decision of *Humphrey* v. *Moore*, 375 U.S. 335 (1964). Significantly, *Humphrey, supra*, involved dovetailing[5] of seniority lists of groups of carhauling industry employees into one master seniority list at the older Louisville Ford plant, LAP. This Court upheld an arbitration award, similar to the present award, merging the two seniority lists and requiring a surviving employer to provide work in accordance with terminal seniority. *Id.* at 339.

In 1980, Dealers Transport filed for bankruptcy protection and Ford awarded the traffic at KTP to Motor Convoy, now known as Allied. Significantly, Motor Convoy took all the former Dealers Transport employees at KTP with their seniority list intact.

The petitioner had no connection with KTP until around 1988, when Ford awarded some of its traffic to Dallas & Mavis. In 1988, Motor Convoy employees at KTP did all the yard and mounting work for both carriers and continued to transport some of the trucks produced at KTP to their destinations.

Following another realignment of traffic by Ford in early 1990, Allied and Dallas & Mavis continued to share in the traffic from KTP, but Allied lost all its "third party" yard

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[5]"Dovetail seniority" is a term defined at Article 5, Section 1, of the Agreement (see footnote 3, *supra*). In *Humphrey*, the Court approved an arbitration decision, under a predecessor to the present Agreement, to the effect that the seniority lists of two separate carriers should be "sandwiched" or integrated into one master list by terminal seniority upon the elimination of hauling rights of one of the carriers at LAP.

and mounting work to Dallas & Mavis. Allied laid off its experienced workers, with much greater terminal seniority than most of Dallas & Mavis' employees, in early March, 1990.

Instead of offering the work to Allied's yard and mounting people, based on their greater terminal seniority, Dallas & Mavis offered the work to its own employees, including truck drivers and personnel from outside Louisville having little or no terminal seniority at KTP.

C. Arbitration

The two employers, Allied and Dallas & Mavis, asked the National Joint Arbitration Committee ("National Committee") to determine seniority rights in light of the 1990 realignment of traffic by Ford.

Following discussion of seniority issues in March, 1990, the National Committee *deadlocked* on the following motion presented by Local 89:

> Based upon the facts presented, the displaced Allied Systems yard employees shall be entitled to exercise their full terminal seniority to fill all yard positions at Dallas & Mavis Forwarding Co., Inc.'s Louisville, Kentucky Truck Plant Facility.

(App. D, page 25a). Under the terms of the Agreement, the deadlocked issue was thereafter referred for binding arbitration by a three-member board of arbitration.[6]

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[6]Article 7, Section 9, of the Agreement (App. D, pages 31a-32a). Contrary to the Petitioner's claims (Petition at page 3), it is the board of arbitration, not the National Committee, which is the superior body at the "highest level of the joint arbitration committee procedure" since the board is expressly "empowered to hear and decide the deadlocked case" and has the authority "to interpret and apply the provisions of [the Agreement]" pursuant to Section 9(b) and to render final and binding decisions per section 9(c) of Article 7.

The board held a hearing on September 24, 1990, after which it gave its written decision, upholding the terminal seniority rights of the displaced Allied employees to the yard and mounting jobs staffed in March, 1990, by Dallas & Mavis.

At the outset, the board noted that Article 5, Section 2, of the Agreement states a strong preference for terminal seniority rights unless specifically contradicted by other provisions (App. E, page 68a).[7] Nevertheless, the board reviewed the various provisions suggested by the parties to apply to the KTP situation.

Ultimately, the board concluded that Sections 4(c) and 8 of Article 5 governed the situation, requiring a dovetailing of seniority lists (App. E, pages 76a, 79a). In making its award, the board stated:

> . . . a majority of the Board of Arbitration finds that at the commencement of its yard and mounting operations at the KTP on March 5, 1990 Dallas & Mavis was required by article 5, subsection 4(c) and section 8 of the 1988 National Agreement to merge its KTP seniority list with that of employees laid off by Allied Systems from yard and mounting jobs at the KTP and to offer jobs in its yard and mounting operations at

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[7]The first paragraph of Section 2 provides:

> *Terminal seniority rights* for all employees covered by this Agreement *shall prevail* unless the Supplements or other provisions of this Agreement provide specifically to the contrary. Because of the nature of the transportation industry in which employees transfer during the term of their employment in the industry from one location to another as the flow of business requires, there are two (2) levels of seniority recognized by this Agreement. These levels are known as "company seniority" and "terminal seniority" as defined in Section 1.

(App. E, page 51a) (emphasis ours).

> the KTP on that merged seniority list in accordance with their respective seniorities. The Board further finds that because Dallas & Mavis did not effect such a merged seniority list and did not offer jobs in its yard and mounting operations at the KTP in accordance with such a list, Dallas & Mavis violated the provisions of the 1988 National Agreement cited in the immediately preceding sentence.
>
> * * *

(App. E, pages 79a-80a). On that basis the board ordered that the jobs be offered in accordance with a dovetailed seniority list and awarded backpay and other appropriate relief.

SUMMARY OF THE ARGUMENT

Contrary to the theme expounded throughout the Petition, there are not "two conflicting principles" for reviewing arbitration awards. This Court's decision in *United Paperworkers International Union* v. *Misco*, 484 U.S. 29 (1987), *reaffirmed* the limited role of judicial review outlined in the seminal cases known as the *Steelworkers Trilogy*.[8] In *Misco*, this Court reminded the district and appellate courts that federal labor policy favors arbitration of disputes, and the courts are not to substitute their judgment for the bargained-for judgment of an arbitrator where an award draws its essence from a collective bargaining agreement.

The court of appeals applied the correct standard of review in the present case, and correctly determined that

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[8] *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

the Award drew its essence from the underlying Agreement. The petitioner is simply unhappy with the result of a well-reasoned, garden-variety arbitration decision. No further review of this matter is warranted.

The precedent cited by petitioner supports respondent's position and does not establish any conflict among the courts of appeal as to issues determinative of the merits of this case.

ARGUMENT

The Petition omits key facts and avoids discussing legal grounds upon which the court of appeals based its decision against Dallas & Mavis. Petitioner's argument is based on a number of fictions, summarized as follows:

1) that the court of appeals did not apply the correct standard of review;

2) that the court of appeals failed to review the board's determination that it was authorized to utilize Article 5, Section 8;

3) that the board had no authority to apply Article 5, Section 8;

4) that the Award was based solely upon the application of Section 8; and

5) that Article 5, Section 4(c), does not apply to the facts involved in the present dispute.

1. Contrary to petitioner's suggestion, the court of appeals applied the correct standard of review. Following this Court's directions in the *Steelworkers Trilogy*, supra, *Misco*, supra, and *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U.S. 643 (1986) (see App. B, pages 11a-13a), the court of appeals noted that:

> The issue to be resolved here is whether the arbitration board drew the essence of its award from the collective bargaining agreement.

(App. B, page 14a).

The court of appeals expressly recognized the limits prescribed by this Court on an arbitrator's discretion:

> [The arbitrator's] award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

Enterprise Wheel at 597 (App. B, page 13a). However, the court of appeals was also mindful of this Court's teaching that the parties had bargained for the board's reasonable construction of the Agreement:

> [T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which (sic) was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

Id. at 599 (App. B, page 13a).

The court of appeals carefully reviewed the Award and key provisions of the Agreement (App. B, pages 4a-10a), applying the above principles, to reach its conclusion:

> We agree with the [district] court that the arbitration board's award was rationally drawn from the essence of the collective bargaining agreement, and so we affirm. . . .

(App. B, page 4a).

2. Contrary to petitioner's suggestion, the court of appeals *did* review the board's determination that it was authorized to utilize Article 5, Section 8. Dallas & Mavis'

entire argument depends on its inaccurate assertions that the board was somehow prohibited from using the authority in Section 8 and that the court of appeals failed to review the board's determination that it was so authorized.

In reality, the court of appeals carefully examined the basis for the board's use of Section 8 of Article 5. First, it noted the board's express authority to decide deadlocked cases and interpret and apply provisions of the Agreement pursuant to Article 7, Section 9 (App. B, page 7a). In addition, the court of appeals observed that no other portion of the Agreement specified any limits on arbitration (App. B, pages 15a-16a).[9] Thus, the court concluded that the board's determination that its opinions were within its authority "to interpret and apply" the Agreement was within the "informed judgment" of the arbitrators and was part of the remedy bargained for (App. B, page 16a).

3. The board of arbitration had authority to utilize Section 8 authority to dispose of seniority issues in all situations. For the above reasons, such power is inherent in the board's authority to interpret and apply the Agreement and to decide deadlocked cases from the National Committee. In any event, the board's interpretation that it had such authority must be honored in absence of any language clearly prohibiting such an approach.

To conclude otherwise would produce absurd results. There are numerous seniority provisions outside Article 5,

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[9]Section 8, Article 5, is *silent* as to the board's authority to determine seniority. There is no prohibition anywhere in the Agreement, and such authority is reasonably within, if not necessarily implied by, the board's express authority under Article 7, Section 9 (above) and its superior role in deciding cases deadlocked at the National Committee level.

Section 8, and it is expressly stated therein that the "[seniority] rules are intended solely as general standards...."

In any event, petitioner *admits* the board was empowered to apply all other seniority provisions (Petition, page 12, footnote 9). Article 5, Sections 2 and 4(c), clearly provide an adequate independent basis for the Award. Section 8 simply provided additional support for the Award.

4. Petitioner's contention that the Award was based solely on the application of Section 8 is without merit. The board noted the express provision at Article 5, Section 2, that terminal seniority rights "shall prevail" unless other provisions of the Agreement "provide specifically to the contrary" (App. E, page 68a; see footnote 7, supra). Twice in its concluding pages the board specifically stated that *both* Section 4(c) *and* Section 8, Article 5, required Dallas & Mavis in March, 1990, to dovetail the respective seniority lists and offer jobs in accordance therewith (App. E, pages 76a, 79a).

5. Petitioner's contention that Section 4(c) does not apply to the present dispute is mistaken. Section 4(c) of Article 5, by its terms, requires dovetailing of seniority lists where, as here, traffic of an employer (Allied) is cancelled by the shipper (Ford) and reassigned to another existing carrier/employer (Dallas & Mavis) at the same location. That is precisely what happened when Ford reassigned Allied's third party yard and mounting work at KTP to Dallas & Mavis in early 1990.

The board considered Section 4(c) susceptible to two possible interpretations and noted that Section 8 made it unnecessary to chose between them (App. E, page 72a). It further stated:

> If subsection 4(c) of article 5 set forth a general standard or guideline, then the result provided for in that subsection should be reached in the present case. It is highly doubtful that the drafters of the 1988 Agreement would have intended different results in cases of total cancellation of one employer's business and of partial cancellation especially where, as in the present case, the partial cancellation related to all of a unique type of work.

(App. E, page 74a).[10]

Ultimately, the board concluded that *both* Section 4(c) *and* Section 8 required the dovetailing of seniority lists and offering of jobs according to terminal seniority. The significance of two contractual grounds is that, even without the board's partial reliance on Section 8 of which petitioner complains, the result would have been the same and, once again, inescapably well grounded in the language of the Agreement.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be denied.

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[10]There appears no basis for different treatment of "total" versus "partial" cancellations of traffic since Section 4(c) makes no distinction. The board was considering whether it was significant that Allied still had some work at KTP after its yard and mounting operation was canceled. The Board's conclusion indicates it did not consider Allied's continued presence at KTP to be of any significance that would affect the outcome.

Respectfully submitted,

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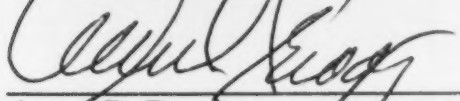
By: 

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